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08/218,920	03/28/94	SMITH C	A582781MAK

YELUNG,G EXAMINER

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ART UNIT	PAPER NUMBER
1302	6

DATE MAILED: 12/16/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire three month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☒ Notice re Patent Drawing, PTO-948.
3. ☒ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, Form PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-25 are pending in the application.
   Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☒ Claims 12-20, 24 and 25 are allowed.
4. ☒ Claims 1-11 and 21-23 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____ ; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Figure 3 is objected to because disclosed elements 490 and 500 are not labeled in this drawing. Correction is required.

Claims 1-11 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is improper in the recitation of "the solution" on line 11. The change of "the solution" to -- the raw permeate -- would obviate this rejection (see the recitation of "a raw permeate at said third outlet" on lines 8-9). Claim 1 is also improper in the recitation of "said third outlet" on line 14. The change of "said third outlet" to -- said second outlet -- would overcome this rejection (see the recitation of "a retentate at said second outlet" on line 8). It is not clear what structure is intended by the limitations recited in claims 7 and 9-11. Note that the limitations recited in claims 7 and 9-11 are method limitations and thus they fail to further limit the subject matter of the previous apparatus claims in terms of positive structure.

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first

paragraph, as failing to provide support for the limitation "a distillation column for producing a first portion higher in alcohol and a second portion lower in alcohol" and the limitation "combining the retentate with one of said first and second porions for producing a treated solution" recited in claim 21, lines 6-10 (specification basis for these limitations should be pointed out by line and page, if basis can be provided.

Claims 21-23 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention

were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1, 3, 4 and 8-11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Fricker. Fricker shows all the structural elements set forth in claims 1, 3, 4 and 8-11. See especially Figure 1 of Fricker.

Claims 2 and 5-7 are rejected under 35 U.S.C. § 103 as being unpatentable over Fricker in view of Mattick et al. It would have been obvious to pass the alcohol-containing permeate of Fricker through an anion exchange column to remove volatile acidity from the permeate since Mattick et al. show the conventional expedient of reducing total acidity in an alcoholic beverage by means of an anion exchange column.

Claims 21-23 are rejected under 35 U.S.C. § 103 as being unpatentable over Fricker. Fricker discloses a method for concentrating wine, which method includes the steps of processing the wine by reverse osmosis for producing a retentate and a raw permeate, treating the raw permeate by passing it through a distillation column for producing a distillate containing alcohol and volatile components, and combining the retentate with the distillate to produce a concentrated wine. It would have been obvious to employ the distillation column of Fricker to produce a first permeate portion higher in alcohol and a second permeate portion lower in alcohol followed by combining the retentate with

one of the first and second permeate portions for producing a low-alcohol wine or a high-alcohol wine since it simply depends upon consumer preference.

Claims 12-20, 24 and 25 are allowed.

The foreign references cited by applicant on the Form PTO-1449 (Paper No. 2) have not been considered since a translation of the pertinent portions of each reference has not been submitted. See 37 CFR 1.98. A translation of the pertinent portions of each foreign reference should be transmitted if an existing translation is readily available to the applicant in order that it may be evaluated by the Examiner.

Any inquiry concerning this communication should be directed to Examiner George C. Yeung at telephone number (703) 308-3848.

Examiner George C. Yeung/om
December 12, 1994
December 14, 1994

GEORGE YEUNG
PRIMARY EXAMINER
ART UNIT 132